

REMARKS

Claims 1-7, and 32 have been canceled. Claims 8-41 are currently pending. Claims 8, 12, 13, 14, 19, 20, 24, 33, and 41 have been amended. New claims 42-49 have been added.

Restriction Requirement

The Examiner is requiring restriction under 35 U.S.C. §121 to one of the following inventions:

- I. Claims 8-14 and 19-41, drawn to food and feed comprising a phytase;
- II. Claims 15-16, drawn to a method for treating a feed with a phytase to reduce inorganic phosphorus; and
- III. Claims 17-18, drawn to a method for supplementing the diet of an animal by feeding a composition comprising a phytase to said animal.

Applicant hereby elects group I (claims 8-14 and 19-41) without traverse.

Claim Amendments

Claims 8, 13, 19, and 24 have been amended to include the phrase “a nucleic acid derived from a bacteria”. Support for this amendment can be found, *inter alia*, at page 10, lines 1-3, and page 113, line 5, to page 114, line 37 of the specification. Claim 41 has been amended to provide the correct reference to the claim which it is dependent from. Support for new claims 42-48 can be found, *inter alia*, at page 10 of the specification, second and fifth full paragraphs. Claims 12, 14, and 20 have been amended to include SEQ ID NO: 1 with and without the nucleotides that encode the His tag, and to include the possibility that a thymine can be substituted with a uracil. In addition, claims 12, 14, and 20 have been amended to include SEQ ID NO: 2 with and without the presence of the His tag. Support for amendments to claims 12, 14, and 20 and new claim 49 can be found, *inter alia*, in Figures 1A and 1B as filed with the application, in SEQ ID NOs: 1 and 2, page

16, line 25 to page 17, line 2 of the specification, and page 55, lines 4-5 of the specification. Claim 33 has been amended to limit the gram negative bacteria to *Escherichia coli*.

No new matter has been added by way of these amendments.

Applicant expressly reserves the right under 35 U.S.C. § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicant requests examination of the elected subject matter on the merits.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at (858) 720-7961.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 564462001811. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: 2/22/05

Respectfully submitted,

By Brenda J. Wallach
Brenda J. Wallach, Ph.D.

Registration No.: 45,193
MORRISON & FOERSTER LLP
3811 Valley Centre Drive, Suite 500
San Diego, California 92130
(858) 720-7961